

ARIZONA SURVEYING

AND

BOUNDARY LAW

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CHAPTER NO.	CHAPTER TITLE	PAGE NO.
*	Introduction	*
*	Chapter Summaries	*
1.	A Standard of Care	1
2.	Acquiescence	12
3.	Adverse Possession	16
4.	Common-Law Dedications	40
5.	Destruction of Monuments	63
6.	Drainage Law	68
7.	Easements and Licenses	113
8.	Estoppel	156
9.	Extinguishment of Easements	177
10.	Highway Law	196
11.	Mechanic's and Materialmen's Liens	243
12.	Original Monuments Within a Subdivision	262
13.	Parol Agreements	315
14.	Party Walls	318
15.	Professions and Occupations	324
16.	Property Line Agreements	348
17.	Unrecorded Instruments	350
18.	Right of Entry	369
19.	Riparian Rights	386
20.	State Plane Coordinates	392
21.	Surveyor's Recordation and Monumentation Law	400
22.	Tidbits	406
23.	Written Title Transfer	410

INTRODUCTION

This book is the result of an intensive research project initiated by myself to better understand Arizona statutes and case law as may be related to the practice of land surveying in this state. During the course of this research I had many discussions with surveyors all over the state and found that this information could be useful to all surveyors as well as realtors, title people, engineers and lawyers. I thought many questions would be answered by researching the topics contained herein, but it seemed for every question answered there were two to replace it. This is good in many ways since we should always be asking questions and striving for new answers. This text will, however, answer some basic questions as related to land boundaries and associated rights. Surveyors or other persons using this text are cautioned to not make decisions as to whether certain conditions place a given situation within the operation of certain laws, however, the land surveyor must utilize some legal principles and evaluate evidence from the field to make quasi-judicial decisions as to the acceptability of monuments found (or to be set).

A surveyor researched the material contained in this book and it was prepared in a manner that should be most suited for understanding by a surveyor. At the very least, for any reader, a better understanding of many topics should be accomplished and I hope some of you studying this material will be encouraged to do further research.

I believe the surveyor should regain the lost authority of making conclusive decisions in the application of legal principles as related to land boundaries. This stature can only be regained by more educated and knowledgeable surveyors with regards to the law. This book is dedicated to those surveyors who believe in this goal and will strive to make surveying a better profession.

Ronald W. Platt, PLS
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CHAPTER SUMMARIES

A Standard of Care - Discusses whether easements of any type need to be shown on every survey map, regardless of contractual obligations; discusses principles on foreseeability, duty owed and how to determine a standard of care; case law provided.

Acquiescence - Discusses the elements required for acquiescence to be used for determining a boundary with respect to both occupation and old surveys/survey monuments; discusses time requirements for acquiescence.

Adverse Possession - Discusses the elements required for transfer to title to land by adverse possession; outlines principles on open and notorious possession, adversity, peaceable possession, continuity of possession; discusses tacking and mother hubbard clause; contains applicable statutes relating to requisite statute of limitations; case law provided.

Common-Law Dedications - Discusses requirements for having a common-law dedication of land or land use to the public; case law provided.

Destruction of Monuments - Discusses the value of a monument and shows statutes that address violations/penalties for destroying landmarks.

Drainage Law - Defines surface, stream, flood waters, and discusses the application of rights to each; discusses common-law and civil law doctrines as related to drainage; outlines duties of the professional land surveyor; case law provided.

Easements and Licenses - Discusses and defines easements in general, prescriptive easements, implied easements, ways of necessity, easements by estoppel thru parol license, and licenses; case law provided.

Estoppel - Discusses elements required for application of estoppel; outlines duties of the professional land surveyor; case law provided.

Extinguishment of Easements - Discusses means by which easements can be extinguished such as, written release, misuse (overburdening and changing the scope), merger of ownership, elimination of the original purpose, foreclosure and tax sale, and abandonment; touches on revival of an easement once extinguished; case law provided.

Highway Law - Discusses the methods by which a highway can be created in Arizona; includes information on user highways, jurisdictional authority, curative statute; also includes applicable statutes from 1866 to present; defines duties of the professional land surveyor; case law provided.

Chapter Summaries

Mechanic's and Materialmen's Liens - Shows applicable statutes that control how to file liens, when liens may be filed and who may file a lien; discusses slander of title; shows court case which discusses a lien that included a description of property that was in error.

Original Monuments Within a Subdivision - This chapter sets forth the legal principles that are applied in determining street and alley widths (and locations) for right-of-ways dedicated by a subdivision plat; extensive discussion on the theory of "original monuments", resurveys, the duty of the surveyor, reference to a map or plat in a description, reliance and acceptance of monuments, and appropriate analysis; case law provided.

Parol Agreements - Discusses the theory and application of parol sales or gifts of land, and parol agreements to uncertain boundary lines.

Party Walls - Discusses the elements required to classify a wall as a party wall; defines party wall; shows how to create a party wall; defines the role of the professional land surveyor; case law provided.

Professions and Occupations - Shows applicable statute for definitions of the professions regulated by the State Board of Technical Registration; discusses practice outside of one's designated professional category; shows statutes for and discusses use of seals, corporate practice, exemptions and limitations, powers and duties of the Board, and violations/penalties; case law provided.

Property Line agreements - Defines property line agreements; discusses when property line agreements may be used and some of the recommended methods to accomplish a property line agreement; outlines some recommended items to include on a property line agreement.

Unrecorded Instruments - Discusses validity of unrecorded instruments; discusses the courts' opinion on unrecorded instruments; shows applicable statutes relating to this topic; case law provided.

Right of Entry - Shows right of entry statute for Arizona; discusses requirements for entry and subsequent damages; includes sample letter asking landowner's permission; case law provided.

Riparian Rights and Navigable Waterways - Defines riparian, avulsion, accretion, erosion, reliction, thread of stream, re-emergence; discusses title of navigable waterways; discusses elements of riparian rights; case law provided.

Chapter Summaries

State Plane Coordinates - Includes the applicable Arizona statutes that affect use of state plane coordinates.

Surveyor's Recordation and Monumentation Law - Shows applicable monumentation statutes and board tagging rules, discusses the same; shows recordation laws and discusses when corner records/record of surveys must be filed.

Tidbits - This chapter has quotes on topics not discussed in other chapters.

Written Title Transfer - This chapter discusses the statute of frauds and shows the original statute; discusses the "livery of seisin" ritual; shows Arizona statute which requires transfer of title to land to be in writing.